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HOUSE OF COMMONS
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Public Bill Committee

NUCLEAR SAFEGUARDS BILL

Third Sitting

Thursday 2 November 2017

(Morning)

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Monday 6 November 2017

The Committee consisted of the following Members:

Chairs: James Gray, † Steve McCabe

† Blomfield, Paul *(Sheffield Central)* (Lab)
† Bradley, Ben *(Mansfield)* (Con)
† Carden, Dan *(Liverpool, Walton)* (Lab)
† Debbonaire, Thangam *(Bristol West)* (Lab)
† Gibson, Patricia *(North Ayrshire and Arran)* (SNP)
Gill, Preet Kaur *(Birmingham, Edgbaston)* (Lab/Co-op)
† Harrington, Richard *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Harris, Rebecca *(Castle Point)* (Con)
† Harrison, Trudy *(Copeland)* (Con)
Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Lewer, Andrew *(Northampton South)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Robinson, Mary *(Cheadle)* (Con)
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Sunak, Rishi *(Richmond (Yorks))* (Con)
† Syms, Sir Robert *(Poole)* (Con)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
† Wragg, Mr William *(Hazel Grove)* (Con)

Kenneth Fox, Rob Cope, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 2 November 2017

(Morning)

[Steve McCabe *in the Chair*]

Nuclear Safeguards Bill

11.30 am

The Chair: I remind Members that they are welcome to remove their jackets during the sitting if they wish to do so. I also ask Members to ensure that their electronic devices are turned off or to silent mode. We do not normally allow tea or coffee to be consumed during sittings. The first order of business is an amendment to the programme motion.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington): I beg to move a manuscript amendment,

That the Order of the Committee of 31 October be varied, by leaving out line 6.

It is a great pleasure to serve under your chairmanship, Mr McCabe—Mr Gray is a hard act to follow, but I am sure that you will do it well. Perhaps I could take the liberty of explaining the amendment. If accepted, it will mean that the Committee will not sit on 7 November. Everything else will remain the same.

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. My function at this point is merely to concur with the Minister's suggestion that we leave out line 6.

Manuscript amendment agreed to.

The Chair: We now begin line-by-line consideration of the Bill. The selection list for today's sittings is available in the room and shows how the selected amendments have been grouped. Amendments grouped together are generally on the same issue. Please note that decisions on amendments take place not in the order in which they are debated but the order in which they appear on the amendment paper. The selection list shows the order of debate. Decisions on each amendment are taken when we come to the clause that the amendment affects. I will do my best to use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following debates on the relevant amendments.

Clause 1

Nuclear safeguards

Dr Whitehead: I beg to move amendment 2, in clause 1, page 1, line 22, at end insert

"which has been approved by a resolution of each House of Parliament".

This amendment would prevent the Government from using powers under Clause 1 to implement an international agreement without the agreement having first been approved by both Houses of Parliament.

It might be a good idea, before proceeding to detailed examination, to say a few words—for the benefit and satisfaction of all hon. Members, I hope—about what we are trying to do with the amendments we have tabled. Members who have had a chance to peruse the amendment paper in some detail will see that all the amendments tabled by Labour Members are entirely consistent with the speedy and successful translation of our present arrangements with Euratom into UK law. I want to emphasise at the outset that the Opposition concur completely that we need a new set of nuclear safeguard regulations and arrangements, contingent upon other actions that may take place as far as the present arrangements with Euratom are concerned. We certainly do not wish in any way to impede the process of achieving that new set of arrangements.

What we do want to do, however, is to put on the face of the Bill a number of safeguards, understandings and clarifications about how that process will come about. That will therefore be the content of this debate. The Committee might find it helpful and of some comfort to learn that that is how we intend to proceed. Should Divisions occur, they will be about particular issues that we want the Bill to address; they will not be an attack on the Bill's fundamental purpose. We want to clarify that point by including a purpose clause setting out what the Bill is intended to do when it becomes law.

The amendment relates to agreements not with Euratom but, we hope, with the International Atomic Energy Agency. The UK had safeguarding agreements with the IAEA before it joined Euratom, and they were effectively taken over by the UK's accession to Euratom by virtue of the European Communities Act 1972, under which that translation was undertaken without the need for further domestic implementing legislation. The safeguarding agreements with the IAEA therefore have to be untangled from Euratom and made anew in the event that we complete the process of leaving the EU. It will be necessary to negotiate effective new safeguarding treaties with the IAEA, and that will depend to a considerable extent on what the UK does to put in place effective measures, contingently or otherwise.

What we do in this Committee today will be a material issue for the eventual treaties with the IAEA. I am sure that the IAEA will want to see that the UK has an effective safeguarding regime in place as a successor to what is presently done under the auspices of Euratom, and that it is as good as or better than what is presently operating in the UK on the IAEA's behalf through Euratom. A starting point for the completion of those negotiations will be that we have something in place that works, is sufficient for the IAEA's purposes and can be the basis for an assurance that those arrangements will be in place for any treaty we make with the IAEA to get us back to the pre-1972 position.

The explanatory notes state:

"The consequential amendments necessary to these pieces of legislation will depend on new safeguards agreements between the United Kingdom and the IAEA that are currently being negotiated; as such the United Kingdom will need to maintain flexibility to ensure these future agreements can be implemented in domestic legislation. A power to allow this legislation to be amended in this way is taken in clause 2 of the Bill."

Not only will the Bill allow that arrangement to take place, but the IAEA will shine a light on the outcome of our proceedings, at the point at which those treaties—those new arrangements—will be concluded and put in place.

I am not clear exactly what sequence of events will be necessary to secure the circumstances under which a new treaty arrangement with the IAEA will come into effect, so perhaps the Minister could help us with that. Negotiations on a new treaty arrangement with the IAEA cannot reach a conclusion, or indeed start, before a satisfactory regime is in place. Does that mean, as I take it to in this instance, the establishment of the possibility of such a regime through the passing of this Bill into law, or the actual establishment of such a regime, which would require the completion of secondary legislation, proper funding, the establishment of facilities through the Office for Nuclear Regulation and all the other things that go with the full roll-out of a new treaty arrangement? If it is the latter case, we might be much further down the line before an agreement with the IAEA can come to pass, and it is conceivable that there might be a cliff edge at that point.

If the full secondary legislation and all the other elements of the new safeguarding arrangement set out in the Bill have not been completed, the IAEA might say to the United Kingdom, "Well, you haven't got a regime in place yet, so we can't complete the new treaty agreement that we have to undertake." It is conceivable that at that point there would be a hiatus, because we would have exited the protection agreement for safeguarding through Euratom but we would not have a new agreement in place with the IAEA, even though we would be substantially further down the road of translating the purview of Euratom into domestic legislation.

I would be grateful to know the Minister's understanding of the IAEA's position. I am aware that at least informal discussions are already taking place with the IAEA, and presumably they will shape the eventual outcome of the treaty arrangement. In any event, the Bill will have to be passed before any agreement with the IAEA is reached—that is the minimal provision. Whether anything else has to be done is a matter for further consideration, but the Bill at least has to be passed.

I think that it is germane to speculate a little on what the treaty might look like. Will it be sufficient to replace the function previously held by Euratom? If it is sufficient effectively to make our previous treaty anew, what additional obligations might its establishment place upon the UK? Of course, we do not yet know the answers to any of these questions, because we are not in a position to conclude the negotiations. Indeed, we are in the foothills of what I imagine will be a substantial mountain of discussion and negotiation with the IAEA before reaching a conclusion.

11.45 am

We understand the necessity of those discussions, but their position with the IAEA potentially puts the Committee in a difficult position as we undertake our consideration of the Bill. We are expected to agree to a measure that includes several Henry VIII powers, as well as some secondary legislation enabling Ministers to conclude the detailed business in the Bill effectively without further reference to Parliament. In many instances—it is by no means always the case—a Public Bill Committee would have before it drafts of the proposed secondary legislation so that it can see what it is signing up to. However, in this instance I can understand why that is not forthcoming. We are in the process of forming and shaping a completely new set of circumstances. The Committee has no draft legislation or impact assessment to look at; in fact, we have nothing but the wording in the Bill.

In order to pass the measure, the Committee will effectively have to pass over the fact that we are also effectively being required to agree to agreements that have not yet been negotiated, and about which we know little. That is an extraordinary state of affairs, and the Committee needs to think carefully about it. I am not comfortable with the idea that, simply by waving through a line of legislation, we should pass over all the scrutiny that is clearly required.

Are we supposed to say, "Okay, we have passed the legislation, and we completely trust Ministers to get all the rest of it right"? That is not all; I am sure that present company would absolutely be able to get it right but, as we have seen, people do not always stay in their office for ever—in this instance, of course, I am sure that leaving office would be the result of promotion. However, we need to be assured that the provision will stand the test of time, over and above any question of an individual Minister being charged with bringing the Bill into full operation. That is particularly important in relation to what we are negotiating with the IAEA.

The clause is intended to capture at least a part of the process in question, for the purpose of Parliament's oversight of the proceedings. It requires prior sight of, and agreement to, the international agreement with the IAEA, when it is concluded, before we can say that the Bill is finally under way as an Act. That in no way impedes the process of negotiation that has to take place alongside the Bill. I have already mentioned an understanding of, and assent to, the fact that the negotiations are taking place, even though we do not know exactly what they will consist of. It is right, of course, that we should shape future treaty arrangements with the IAEA so that they are as clear as possible at the earliest stage.

It seems pretty elementary to include in the Bill a provision that Parliament should look at that process and assure itself that it properly matches up with what we thought we were doing. We find ourselves in unique circumstances when discussing how we will bring about the regime change from Euratom to the UK. The amendment simply states that the Bill should guarantee a proper procedure for parliamentary scrutiny and discussion about what we are doing with the IAEA because of those circumstances.

Alex Norris (Nottingham North) (Lab/Co-op): This is the first time I have served under your chairmanship in Committee, Mr McCabe. This is an important Bill and an important amendment. One of the joys of being a new Member is that friends and family members get in touch on an almost daily basis to ask what I am doing, perhaps imagining that it is all glamour and television. When I tell them that I will be attending the Nuclear Safeguards Bill Committee, they say, "Oh, that doesn't sound like much fun—it sounds quite dry. Do you know anything about nuclear safeguards?" I have therefore been spending my evenings explaining why the Bill is so important.

During the oral evidence sessions, the hon. Member for Copeland spoke eloquently about the impact of the civil nuclear industry on her community, and that supply

[Alex Norris]

chain runs up and down the country. Similarly, we should all be concerned, as legislators and as citizens, about energy security. There is also the issue of public safety. Those are incredibly important matters. We hope that they will never make a visible difference to people's lives, but were they to, we would know about it.

I support the amendment because we cannot wholly subcontract those matters to Ministers. My hon. Friend the Member for Southampton, Test has promoted the Minister once already in this sitting, and that may happen again. Although we can be sure of an individual's knowledge and commitment, we cannot commit in a vacuum to an agreement that we know nothing about and that Ministers would be able to enact without recourse to our parliamentary democracy. We are a parliamentary democracy and Parliament is sovereign.

The amendment is inexorably linked to last June's vote. I represent a leave constituency and I have spent a lot of time talking to people about their reasons for voting leave when I was voting to remain. Those conversations were illustrative. It will not surprise any Members, or indeed anyone watching, to hear that not once did someone say, "I am really concerned that our safeguarding procedures in the nuclear industry are too closely entwined with those of our European neighbours. We really ought to take back control and stand alone on that issue." Of course that never came into it, and I do not believe that is what people voted for. If we stood in the middle of the market square in Bulwell, as I often do, and tried to explain to people that, as an inevitable part of the referendum decision, we will now have to do this—despite the at least mixed legal argument publicly in favour of whether we have to—that would be quite a difficult conversation.

Richard Harrington: I thank hon. Members for their positive contributions, and for their speculation about my possible promotion—I hope that the Prime Minister manages to take some time today to read the *Hansard* report of our proceedings.

I thought that the contributions were very positive. Although the hon. Member for Southampton, Test was gracious in saying that his concerns related not to me but to what happens in future, he is absolutely right, and that is a reflection of Government policy. I hope I will be here to see this through, but none of us ever knows. I am honoured to have two shadow Ministers in this Committee. It is not often that one is graced with two—or even three, if I may include the Opposition Whip, the hon. Member for Bristol West. I have read all the amendments carefully. I do not want this to be one of those Bill Committees in which nobody takes any notice and everyone votes as their Whip tells them; I hope that we can find a much more positive way of dealing with this.

To the best of my knowledge, all of us want the same thing. I do not know to what extent the Opposition have volunteers to be on Bill Committees. I am told that some Bill Committees involve press-ganging hon. Members, as the Royal Navy used to do. However, I think that the members of this Committee are interested in the subject, and not just because of direct constituency interests, such as those of my hon. Friend the Member for Copeland. That is the right thing, because our constituents do not typically think about this subject, but it is our job. If there are issues, we can discuss them at length here and also afterwards. I hope that both shadow Ministers know that we would all much rather there was consensus, because we are trying to reach the same objective.

Given that this is my first contribution in our line-by-line scrutiny of the Bill, I feel it necessary to lay out the broader context for hon. Members, as the debate is on the record and will be read by the industry and anyone else who is interested. I will then turn strictly to the amendment. The Bill is required to establish a domestic nuclear safeguards regime that will enable the UK to meet international safeguards and nuclear non-proliferation standards after we withdraw from Euratom. We all know—I hope the country generally knows—that the nuclear industry is of key strategic importance to the United Kingdom. We are committed to our industry maintaining its world-leading status. We are determined that our nuclear industry should continue to flourish in trade, regulation and innovative research. We must ensure that our withdrawal from Euratom will in no way diminish our nuclear ambitions.

The Secretary of State, the Government and I share the views of many in this room about the importance of having a constructive, collaborative relationship with Euratom and all other international partners. I will set out briefly why we must act. We have emphasised our continued commitment to the IAEA and to international standards for nuclear safeguards and non-proliferation. Nuclear safeguards are reporting and verification processes by which states demonstrate to the international community that civil nuclear material is not diverted into military or weapons programmes. Under the Euratom treaty, the civil nuclear material and facilities in member states are subject to nuclear safeguards measures conducted by Euratom, which also provides reporting on member state's safeguards to the IAEA. That three-way link allows global oversight of nuclear safeguards.

It is clear that the existence of a UK nuclear safeguards regime is a prerequisite for the movement of certain nuclear materials called special fissile materials in and out of the UK. It underpins our international commitment to the IAEA and our nuclear co-operation agreements. As we heard in evidence on Tuesday, without a regime in place, nuclear operators in the UK will be unable to import fuel or do anything necessary for their business. The Business, Energy and Industrial Strategy Committee, which I and some of the same witnesses appeared before yesterday, heard likewise.

12 noon

Nuclear safeguards include reporting on civil nuclear material holdings and development plans, inspection of nuclear facilities by international inspectors, and monitoring through equipment, such as cameras and recording equipment, placed in the facilities. I will make it clear—because on Second Reading some Members were confused—that safeguards are different from nuclear safety, which is basically the prevention of accidents and catastrophe. That is just as important, if not more so; it is just separate in this case. Nuclear security means physical protection measures, as most of us can imagine, and involves the police and other services. It is the subject of independent regulatory provisions. I understand the confusion, because I must

confess that before I took on this portfolio I did not know the difference. I am sure that the shadow Minister, the hon. Member for Southampton, Test, knew the difference from a very young age and knows the difference in great detail—I have done my best to catch up.

Let me turn to what I think most Members are interested in, which is the progress so far. I assure Members that the Government have not been ignoring the challenges that clearly lie before us. We have already made great progress in our work to secure continuity for our nuclear industry by establishing long-term arrangements to secure nuclear safeguards. As my right hon. Friend the Secretary of State set out in September—this is very important—our intention is for the new domestic regime

"to exceed…the standard that the international community would require from the UK"

and is expected to be

"as comprehensive and robust as that currently provided by Euratom."—[*Official Report*, 14 September 2017; Vol. 628, c. 25WS.]

It will be run by the ONR, which already has regulatory responsibility for nuclear safety and nuclear security. Therefore, quite apart from the Euratom/Europe issue, it fits comfortably under that umbrella, although I accept the former—when I say "quite apart from," I am not making any value judgment. If we must have a separate safeguards regime, as we do, the ONR is the natural body for it to fit within.

The ONR is in the process of developing an expanded safeguards function. For example, the ONR will recruit a tranche of inspectors, with further recruitment to come—I am sure that will be discussed further, because it was mentioned in the evidence given both to this Committee on Tuesday and to the Business, Energy and Industrial Strategy Committee yesterday. The ONR will also build additional institutional capacity and develop the necessary IT systems. ONR experts have been in discussions with the IAEA on the technical aspects of the new system. We will also be agreeing a new voluntary offer agreement and additional protocol with the IAEA, and those negotiations have already begun. I know that hon. Members from all parties will agree that having a civil nuclear safeguards regime for the UK is of paramount importance.

I will briefly give hon. Members an overview of the Bill, before getting down to the narrower business of the amendments. I promise that I will not continue like this throughout the Committee's deliberations, Mr McCabe; I just felt that it was necessary in my first contribution, despite the fact that many hon. Members know what I am talking about. I feel that it is necessary to put it on the record for those, less fortunate than ourselves, who have not been selected for this Committee despite wanting to be, which happens occasionally.

The Bill amends the Energy Act 2013 to replace the ONR's existing nuclear safeguards purpose, which I have explained, with a new nuclear safeguards purpose definition. The ONR will regulate the new nuclear safeguards regime using its existing functions and powers. However, the Bill creates new powers, so that we can put in place through regulations the detail of the domestic safeguards regime. Some examples of that would be detail about accounting, reporting, control and inspection arrangements.

Finally, the Bill creates a new but limited power to create regulations to amend the Nuclear Safeguards and Electricity (Finance) Act 1978, and the Nuclear Safeguards Act 2000 and the Nuclear Safeguards (Notification) Regulations 2004. That power allows the references in all that legislation to international agreements, which have been mentioned before, to be updated once new international agreements have been reached.

I look forward to considering all these measures in depth with hon. Members over the next two weeks. I want to make it clear again that although we are leaving Euratom, we support Euratom and we will want to see continuity of co-operation and standards, because we have had a successful relationship with the Euratom community for more than 40 years and we want to maintain that successful civil nuclear co-operation.

I would like to reassure hon. Members that we are totally committed to supporting the nuclear industry and we will achieve that through several means, including the continued application of high standards on nuclear safeguards that the Bill will enable. The Bill is restricted to the nuclear safeguards regime, but there are many other aspects of what Euratom does. I do not know whether you feel that those aspects are within the scope of the Bill, Mr McCabe, but they have been widely discussed, there will be other opportunities to discuss them, and we are very much aware of them.

I will now turn to amendment 2—I am sure that hon. Members on both sides of the Committee will breathe a sigh of relief, and I thank them for their patience. In his eloquent and well-informed opening remarks, the hon. Member for Southampton, Test asked specifically about progress on the IAEA negotiations. That was a reasonable question, which I had intended to answer anyway. We have emphasised our commitment to the IAEA and to international standards for nuclear safeguards and non-proliferation. We have begun formal discussions with the IAEA to conclude the bilateral safeguards agreements that will replace the current trilateral safeguards agreements between the UK, the IAEA and Euratom. As the hon. Gentleman correctly said, we will need them from the time of our withdrawal from Euratom.

Discussions began in September. They have been constructive and substantial progress has been made, as my colleague Mr David Wagstaff said when he and I gave evidence to the Business, Energy and Industrial Strategy Committee yesterday. Importantly, our view is that the new agreements with the IAEA should follow the same principles as our current ones: the IAEA will retain its right to inspect all civil nuclear facilities and will continue to receive all current safeguards reporting, ensuring that international verification of our safeguards activity will continue to be robust. We are working with international partners on bilateral arrangements, and with the IAEA itself, to ensure that they are in place ahead of the UK's withdrawal from Euratom. We are seeking to conclude new agreements with the IAEA that follow the principles I have outlined. I cannot make our intention clearer: we have every reason to believe that the agreements will cover exactly the same points that they do now. We are seeking to achieve that on a bilateral basis, and we have made a lot of progress.

I was asked about the timetable of the progress. I expect, and have every reason to believe, that the new agreements will be put to the IAEA board of governors to ratify at some point in 2018. We are on target for that. I am confident, and happy to say on the record in Committee, that the new agreements should be ready to enter into force upon the UK's withdrawal from Euratom.

That is important, and I agree that the House has a responsibility to know that it is happening, but officials are confident that it will, as was put on the record yesterday when our lead negotiator and I gave evidence to the Select Committee. Obviously, he is not here today because this is a Bill Committee, but I found that evidence compelling, coming from the person who is actually dealing with these matters.

New section 76A(1)(b) allows relevant international agreements, such as those we have been talking about, to be implemented in nuclear safeguards regulations. We are negotiating new agreements with the IAEA and other states. Those agreements will be capable of being relevant international agreements, but only when specified in regulations subject to the draft affirmative procedure. That is an important point about parliamentary scrutiny: we cannot just proceed without Parliament being involved. I know that the Opposition amendments are well thought through and well drafted, but I believe that we will do that through the draft affirmative procedure.

To be precise, that is the effect of clause 1(3)(b), in its proposed subsection (1B), and paragraph 9(2)(b) of the schedule. International treaties are already subject to the general ratification processes of the Constitutional Reform and Governance Act 2010. The Bill goes a step further by separately requiring "relevant international agreements" on nuclear safeguards to be approved by Parliament in draft affirmative regulations before the regulation-making powers of new section 76A are unlocked. I apologise for being technical about this, but I feel these are a direct—I will not say rebuttal; we are not in conflict, I hope—answer to the points genuinely made about the fear that there would be no further parliamentary scrutiny, and that a Government who were not well meaning could decide to make changes without reporting to Parliament.

In more detail, clause 1(3) amends section 112 of the Energy Act 2013 by inserting a definition of "relevant international agreement" on nuclear safeguards. The ONR must ensure the UK's compliance with such agreements in the new definition of the nuclear safeguards purposed in new section 72(b) of the 2013 Act. The Secretary of State also has the power to implement such agreements because of the power contained in new section 76A(1)(b). A relevant international agreement must be one to which the UK is party and that relates to nuclear safeguards; it is quite specific. An undertaking given by the UK to the IAEA in respect of guidance or other documents issued by the IAEA must also be specified as a relevant international agreement.

In every case a relevant international agreement always requires parliamentary scrutiny. It will become a relevant international agreement, for the purposes of these powers, only when specified in regulations made by the Secretary of State under new subsection (1B) of section 112 of the 2013 Act. I confirm that such regulations will always be subject to the affirmative procedure. The provision governing that procedure is found in paragraph 9(2)(d) of the schedule, which adds the regulations made under new subsection (1B), which is the power to specify relevant international agreements. It adds that to the list of provisions set out in section 113(2)(b) of the 2013 Act. That sets out the regulations made under the 2013 Act, which are always subject to the draft affirmative procedure. In addition, the Secretary of State is also required to consult before specifying relevant international agreements.

In conclusion, I hope that I have addressed the concerns of the hon. Member for Southampton, Test in detail. Parliament will have the opportunity to review international agreements before ratification, and any regulations defining relevant international agreements, for the purposes of the Bill, will be subject to the draft affirmative procedure. Basically, the amendment asks for parliamentary scrutiny, but our position is that Parliament clearly already has it.

Dr Whitehead: I thank the Minister for his comprehensive, though not entirely conclusive, explanation of where we are, so far as international agreements and parliamentary scrutiny are concerned. I would appreciate it if he could give a brief thought to the question of the point at which the IAEA will conclude that we have transposed the Euratom responsibilities to the ONR. Will that be when we have passed the enabling legislation, or when the process is completed and can therefore be presented in a box, as it were, to the IAEA saying all is done? That itself is likely to slow up the negotiation process with the IAEA, which I appreciate the Minister said he considers will be complete by exit day.

12.15 pm

Richard Harrington: I thank the hon. Gentleman for that valid point, which requires both a simple and a complex answer. The simple answer is that there is a sequence, and the agreements have to be ready but will not come into force until after we leave Euratom. The IAEA has a ratification procedure, which I intend to come to. The agreements have to be ratified by its board. The bilateral agreements referred to have to be ratified by the Parliaments of each country involved. I am not led to believe that that will be a problem, because I am pleased to say that these negotiations are more in the form of constructive discussions than one side wanting one thing and another side wanting another. What I am about to say will hopefully answer the hon. Gentleman's questions. If not, I am sure that he will say so, and I am happy to meet him any time to discuss that.

I understand that hon. Members are concerned to ensure that there is parliamentary scrutiny. I have covered that, but I must stress that the measures in the amendment would be a significant departure from the usual position on the ratification of treaties, and I do not consider it appropriate in the context of the Bill. As Members will be aware, the UK Government are responsible for negotiating and signing international treaties involving the UK and always have been. The ratification of international treaties is covered in legislation, as the Constitutional Reform and Governance Act 2010 provides a ratification process that requires treaties to be laid before Parliament prior to ratification, except in exceptional circumstances—I do not know what the exceptional circumstances are, but I imagine they would be a war or something like that.

The Government have the power to conclude international treaties under their prerogative powers. Of course, that cannot automatically change domestic law or rights and cannot make major changes to the UK's constitutional arrangements without parliamentary authority. That remains the case for international

agreements relating to safeguards that are currently under negotiation—for example, the nuclear co-operation agreements currently being negotiated with the US, Canada, Japan and Australia, and the new safeguards agreements with the IAEA. Parliament will therefore have the opportunity to consider those agreements before they come into force.

We have been open and honest with Parliament about ongoing negotiations and will continue to do so. The intention is for those agreements to be presented to Parliament before ratification, ahead of the UK's withdrawal from Euratom, and they will come into force immediately upon our exit. I therefore hope that the hon. Gentleman will withdraw the amendment.

Paul Blomfield (Sheffield Central) (Lab): It is a pleasure to serve with you in the Chair, Mr McCabe. I hope to respond to the Minister with the same collaborative approach he has tried to set for the Committee, and I hope all our discussions will be along those lines.

It is worth saying at the outset that I do not doubt for one moment—I do not think any Opposition Members do—the Minister's good intent in seeking to reassure us on this issue. However, it is also important to recognise in not only this discussion but the wider discussions we will have in our remaining sittings just what is at stake. On a number of issues relating to our negotiations on exiting the European Union, Departments have shown good intention, but because there has been insufficient follow-through, that intention has not necessarily produced the outcomes to reassure other sectors.

It might be in some other areas possible to blur things a little bit at the edges, but we need to remind ourselves of the evidence we had from Professor Matthews on Tuesday. Nothing can be left to chance here. Professor Matthews outlined that if we do not get the safeguarding regime right, the consequences are that,

"Springfields, which produces nuclear fuel, will stop working. The Urenco plant at Capenhurst…will stop working because it will not be able to move uranium around."

He went on to say:

"It would be difficult for Sellafield and other decommissioning sites, such as the old research sites at Dounreay, Harwell or Winfrith; some of the work there would grind to a halt as well."—[*Official Report, Nuclear Safeguards Public Bill Committee,* 31 October 2017; c. 43, Q88.]

There is a lot at stake in ensuring we get this not just more or less right, but precisely right. That is one of the key factors behind our amendment. We must not simply be reassured in the Committee; Parliament needs to be reassured and to have the opportunity to express its view on this before we face the sort of consequences that Professor Matthews talked about.

The Minister has reassured us—again, I do not doubt his intention—on the full parliamentary scrutiny through the affirmative process. My reading of the clauses suggests that there is a bit more ambiguity. New paragraph (1B), which he referred to, says that the Secretary of State will not necessarily provide regulations but "may by regulations", which gives quite a significant grey area. If the Minister is as sure as he indicated that there will be full parliamentary scrutiny by the affirmative process, the simplest thing to do would be to accept our amendment, which seeks nothing less.

Dr Whitehead: I am grateful to the Minister for setting out in some detail the path by which he considers Parliament would have some scrutiny of the arrangements with the IAEA when they come about. However, I am concerned, as is my hon. Friend the Member for Sheffield Central (Paul Blomfield), about whether what the Minister points to in the Bill actually does the job he thinks it does.

In new subsection (1)(1A) and (1B), inserted by clause 1(3), there is a curious circularity. I will not go through the whole thing, but new paragraph (1B) states:

"The Secretary of State may by regulations specify agreements for the purposes of subsection (1A)(b)."

If we then look at paragraph (1A)(b), it says:

"is specified in regulations under subsection (1B)".

We then go back to paragraph (1B), and the regulations specified there are the regulations that the Secretary of State may make—that is it. We do not get very far in what I consider real parliamentary scrutiny by that semi-circular argument.

It appears that a relevant international agreement is as specified under new paragraph (1B), and a relevant agreement can be specified by regulations that the Secretary of State may make. If the Secretary of State does not pass regulations specifying those agreements, that is not the case, and the relevant international agreement then does not apply for the purposes of the legislation.

I suggest it would be far simpler to accept our amendment in view of the unique circumstances we are in at the moment. We are having to make treaties anew, and we need to be satisfied that they fully replace what we previously had for a number of years through Euratom. I appreciate that that is a voluntary agreement that has been entered into, and I appreciate that that agreement will undoubtedly be pursued in the light of co-operation, because of the voluntary nature of the agreements being entered into by the IAEA.

The central fact of the matter is that that is being undertaken not only while the Committee considers what it is going to do, but is actually tucked into the legislation as something that will remain outside what the Committee considers, because we have to take decisions about what we want to make our safeguarding regime look like when we do not know what those agreements will consist of. Having this particular system in place, which I accept is not the case for all international treaties, as far as the Bill is concerned, appears to close the circle, as far as the relationship between what the Committee is doing and what the treaty will look like when it comes out is concerned.

As I said, unless someone explains to me that I have completely misread new paragraphs (1A) and (1B), and that there is something else there that does not actually do what I think it says it does, I cannot take full reassurance from those clauses in the way the Minister suggests.

Richard Harrington: I have a suggestion for how we can progress, but I will just say that new paragraph (1B) provides the power to specify agreements for the purpose of the definition but the regulations are always subject to the affirmative procedure, so I argue that the hon. Gentleman's object has already been achieved.

My suggestion, if it is acceptable—I do not know whether the hon. Gentleman intends to press his amendment to a vote—is that I am happy to sit down with him and discuss this in detail before Report. He has made quite technical, legal points, so I offer to meet

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him, if that is acceptable. Obviously, it is up to him to decide whether he wishes to press his amendment to a vote. I would have to oppose the vote, simply because I believe we want the same object, but my view is that the Government have clearly covered his rightful concerns about parliamentary scrutiny in our drafting of this.

Dr Whitehead: I am grateful to the Minister for that clarification and for that kind offer, which is quite important for the way that we proceed. I think that the Minister, while he indicates that everything will be done under the affirmative procedure, has still not overcome the circularity in this particular part of the legislation, where the word "may" could derail the whole process of getting us to a position where those international agreements can be determined to be relevant.

Richard Harrington: Any piece of any statute is capable of being changed by Parliament in a new Bill anyway, but on the "may" and "must" argument, the hon. Gentleman will find that "may" is generally the terminology used in these things. There "may" be—oh dear; there might be reasons where a Secretary of State might quite rationally decide not to do something. A purely speculative and hypothetical example would be if something changed and this piece of legislation was genuinely not needed. I do not quite know what could happen, but hon. Members might speculate. The shadow Minister is nodding and smiling; I think he knows what I mean. There may, or must, be other reasons why. It would be strange to impose on a Secretary of State, saying that he or she "must" do something, if it was not necessary. If the Secretary of State did not do it, there could easily be an Act of Parliament or something else to reverse it. It is very normal procedure to say "may" in most Bills. The wording is not meant as a possible way of trapping a mad Secretary of State—I hope no one in this Room or anywhere else would suggest such a thing of the current one—who lost their head and said, "Oh, I've got the power; it doesn't say I must, so I won't do it, because it says I may."

12.30 am

Dr Whitehead: I thank the Minister for that further clarification and of course accept that the usual procedure in such circumstances is for the word "may" to be placed before the power of the Secretary of State to cast secondary legislation, whether affirmative or negative. Of course, the Bill is not being dealt with in normal circumstances because, as we shall argue on a later amendment, the normal circumstances for secondary legislation are that there is a change—positive, one would hope—to the previous situation, but that it is built on something pre-existing that will continue to take place even if the regulations are not laid.

As I am sure the Minister is aware, this place is littered with cases where a power to enact secondary legislation has simply not been used. He suggested that there might be circumstances in which it would be perfectly rational not to do so. There are instances in the history of the House where Governments have decided to put new measures before the House, eclipsing previous legislation. That previous legislation, including its secondary provisions, stays on the statute book, but the secondary legislation is not enacted, as it has been superseded.

At either end, that means that "may" is protected either because a new measure has come along, making it redundant to enact secondary legislation; or because, if the Minister decides not to enact the secondary legislation, the status quo ante prevails. However, that is not so in this case, because there will be no status quo ante should we exit Euratom without an associate arrangement. There would be nothing, and the circumstances attached to "may" take on a different colour, under that new and unique circumstance. That is why I am concerned that if we legislate using the wording that we often use in different circumstances, we may fall short of our duty, given that there is no status quo ante, to get things right in relation to subsequent proceedings.

Richard Harrington: I am trying, as always, to think carefully about what the hon. Gentleman is saying; but let us say there was a Secretary of State who was misguided or mad enough to say, "Actually, I am not going to do this because I do not want a nuclear safeguards regime. I want this country to be like North Korea"—or wherever. I think North Korea is the only country without a nuclear safeguards regime. If the Secretary of State desired to take that approach, there would be a lot more tools available for not having a nuclear safeguards regime than the interpretation of "may" or "must". I am not making light of the point—it is dead serious.

No one has suggested any possibility that we should not have a nuclear safeguards regime, and wrong interpretation of the "may" or "must" point would mean that someone—a Secretary of State or a Government—had decided to do that. If a Government had decided to do that—I know it would not be the Opposition or anyone in any normal form of politics—such a change of policy would not just rely on an interpretation of "may" or "must".

Dr Whitehead: I understand that point well. Of course we have to squeeze our brains enormously to think about the circumstances under which that set of events would come to pass, but that is not what we are talking about in this clause of the Bill. We are talking about relevant—or otherwise—international agreements. As far as I understand it, in this clause the Secretary of State effectively has the power to declare something a relevant international agreement or not, and to set down what is and what is not relevant in secondary legislation. That does not affect the agreement, but it affects whether that international agreement is deemed to be relevant, and hence whether it comes under the purview of the arrangements that the Minister said were in place to ensure parliamentary scrutiny on those agreements. It is not about whether we design a nuclear safeguards regime, but whether an agreement reached subsequent to our setting out our safeguarding procedure is deemed to be relevant for the purposes of parliamentary discussion when that treaty has come about. That is what I understand this clause to be about. I am grateful to the Minister for his kind offer to lay this clause on the table, although there is not procedure to do that exactly, and discuss what may or may not happen on Report.

Richard Harrington: It must happen.

Dr Whitehead: It must happen—well, we must consider the Bill on Report, but things may or may not take place on Report that we would be entirely happy with. I take that offer as suggesting that if there is confusion in Committee about what the wording means, our minds can be put at rest at that point, and if not it may be necessary to produce some kind of wording, perhaps on Report, that gets us to the position we both want to be in, so that we are in the same place on this legislation. That is my understanding of what the Minister has said. If that is the case, I am happy to take up that offer—provided a cup of coffee is involved as well—and we will not press for a Division on this clause.

Richard Harrington: The hon. Gentleman is being a little modest about his beverage requirements, as I happen to know that he does not have caffeine in his coffee.

Dr Whitehead: Decaffeinated coffee.

Richard Harrington: Otherwise, I would put extra caffeine in the coffee. The serious point is that I do not accept the fundamental point of the amendments and I do not want the hon. Gentleman to think that I do. He has brought up some serious points, some of which are legal and technical. I would like to take the opportunity to sit down in a non-confrontational way with him and any colleagues who wish to come to drill down on those points. I do not want him to think that I suddenly agree that we do not have enough scrutiny in the Bill, but he made some good and technical points about the interpretation of clauses. I hope we can do exactly as he said: sit down and reach a wording that is acceptable to us all, given that we have the same objective. If not, we can always consider it on Report. That would be the correct way to progress, if that is satisfactory.

Dr Whitehead: In that case, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Whitehead: I beg to move amendment 1, in clause 1, page 2, line 14, at end insert—

"(3A) No regulations may be made under this section unless the Secretary of State has laid before both Houses of Parliament a statement certifying that, in his or her opinion, it is no longer possible to retain membership of EURATOM or establish an association with EURATOM that permits the operation of nuclear safeguarding activity through its administrative arrangements."

This amendment would require the Secretary of State to certify, before making any regulations to provide for nuclear safeguarding regulations, that it was not possible to remain a member of EURATOM or have an association with it.

The Chair: With this it will be convenient to discuss the following:

Amendment 3, in clause 1, page 3, line 3, at end insert—

"(11) Regulations may not be made under this section unless the Secretary of State has laid before both Houses of Parliament a report detailing his strategy for seeking associate membership of EURATOM or setting out his reasons for choosing to make nuclear safeguards regulations under this Act rather than seeking associate membership of EURATOM."

This amendment would prevent the Secretary of State from using the powers under Clause 1 to set out a nuclear safeguards regime through regulations until a report has been laid before each House setting out a strategy for seeking associate membership of EURATOM or explaining why we cannot seek associate membership of EURATOM.

Amendment 8, in clause 4, page 5, line 6, at end add—

"(5) No regulations may be made under this section until—

(a) the Government has laid before Parliament a strategy for maintaining those protections, safeguards, programmes for participation in nuclear research and development, and trading or other arrangements which will lapse as a result of the UK's withdrawal from membership of and participation in EURATOM, and

(b) the strategy has been considered by both Houses of Parliament."

This amendment would require the Secretary of State to lay a report before Parliament on the protection and trading arrangements that arise from membership of EURATOM, and his strategy for maintaining them prior to making regulations concerning nuclear safeguarding.

New clause 1—*Purpose*—

"The purpose of this Act is to provide for a contingent arrangement for nuclear safeguarding arrangements under the terms of the Nuclear Non-Proliferation Treaty in the event that the United Kingdom no longer has membership or associate membership of EURATOM, to ensure that qualifying nuclear material, facilities or equipment are only available for use for civil activities (whether in the United Kingdom or elsewhere)."

This new clause would be a purpose clause, to establish that the provisions of the Bill are contingency arrangements if it proves impossible to establish an association with EURATOM after the UK's withdrawal from the EU.

Dr Whitehead: The new clause and amendments that we are debating in this group go to the heart of the Bill, and I shall explain why. I thank you, Mr McCabe, for ensuring that new clause 1 was in this group, rather than at the end of proceedings, as it would be normally, because that allows us to discuss in some detail, around both the amendments and the clause, what goes in at the beginning of the Bill and what the Bill is about.

Our new clause 1, the essential part of this group, seeks to place a purpose clause at the beginning of the Bill. Hon. Members who have studied the history of purpose clauses in some depth may say, "That's not usual; most Bills don't have purpose clauses," and it is true that most do not, but it is not the case that they never do; and I suggest, given what we have discussed on Second Reading and in Committee today, that to establish a purpose clause for this Bill would seem very sound and wise. For the record, a number of Acts of Parliament do have purpose clauses. For example, both the Criminal Justice and Court Services Act 2000 and the Education Act 2002 have substantial purpose clauses, setting out what the Act is about.

In this instance, the key issue about this Bill is that it is a contingent Bill. It is not like a number of other pieces of legislation, which simply require that we undertake certain actions to achieve a certain end. This Bill will not come into operation, should other circumstances take place. Indeed, on Second Reading the Secretary of State made it clear how the Bill had been prepared. He said:

"I can confirm that the Bill has been prepared on a contingency basis. The discussions around our continued arrangements with Euratom and with the rest of the European Union have not been concluded, but it is right to put in place in good time any commitments that are needed in primary legislation. Euratom has

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served the United Kingdom and our nuclear industries well, so we want to see maximum continuity of those arrangements."—[*Official Report*, 16 October 2017; Vol. 629, c. 617.]

I think the Secretary of State, in addition to making it clear that the Bill could be described as a contingent piece of legislation, was alluding to the fact that there are a number of sets of circumstances, which we do not yet know about but might in the fullness of time, that would effectively cause the Bill not to be operational although it remained on the statute book. Harking briefly back to our previous discussions, the Bill might conceivably be in the position that I described of other pieces of legislation that are full of provisions for secondary legislation—Acts that, because something else has happened that causes that Act and those provisions to become effectively redundant, stay on the statute book but are not further enacted. A purpose clause to make that clear at the beginning of this piece of legislation seems quite important, given the fairly unique status that this piece of legislation holds.

12.45 pm

When I say that other things could occur, I mean that in the fullness of time, we might turn out to remain a member of Euratom. Even if not a member, the UK might conceivably have an association with Euratom such that the provisions for nuclear safeguards in the Bill might continue to be undertaken under the auspices of Euratom—not the Office for Nuclear Regulation as the Bill sets out. I will take those two possibilities in turn.

There are legal opinions and other opinions around, about whether Euratom is synonymous with the treaty of Rome and whether, therefore, the decision to exit the EU means that we must exit Euratom at the same time. After all, Euratom was in place marginally before the EU took shape originally and it was brought about by a separate treaty, not the one that caused the EU to come into being. Although there have been a number of arguments on the other side, it is true that, to all intents and purposes, that Euratom treaty has been absorbed into the doings of the EU in subsequent years. In a number of instances, such as the use of the European Court of Justice to undertake dispute resolution procedures within Euratom's undertakings, one could certainly say that Euratom is fairly firmly stitched into what takes place in the European Union. However, it is by no means clear that it originated in precisely the same way as the European Union.

Our understanding is that the reason that the Prime Minister decided to include leaving Euratom in her letter to the European Union invoking article 50 was to pay particular attention to the issue of the ECJ as far as Euratom was concerned, and it was not done necessarily on, shall we say, universally agreed advice. Whether the very inclusion of that view in that letter itself causes us to exit Euratom in a way that we might not otherwise have done is a matter for further debate and conjecture; but there is at least an open question as to whether, should the UK continue to observe Euratom's procedures exactly and agree to what it is that Euratom does in its entirety, there are circumstances under which membership of Euratom might be maintained.

I agree that, since 1956, no non-EU member has held Euratom membership, but I worry that that argument—this is a terrible Welshist analogy—is a little like someone going to a village, knocking on each door and asking what the name of the resident is, and everyone says Jones so they leave the last five houses out, on the understanding that everyone in that village is called Jones so they can go home. The fact that there are no members of Euratom who are not EU members will not necessarily always be the case in the future.

Still less equivocal is the idea that one might be an associate member of Euratom, or have an association with Euratom, which does the job that we are seeking to do concerning nuclear safeguards in the Bill. Although an association with Euratom would not have all the requirements and privileges of membership, it would nevertheless take under its wing the nuclear safeguards process that we have worked on through Euratom for a number of years, and that we would want to have in identical form in UK legislation for a number of years subsequently.

There are different circumstances around associate membership than there are around full membership. I mentioned that no non-EU states have full membership of Euratom, but some have what might be called associate membership, or various other kinds of association. It might be worth considering for a moment what those associations consist of. The Swiss associate membership of Euratom is certainly fairly limited; it covers some things, but it does not include the sort of safeguarding arrangements with Euratom that we might want to continue. The EU-Ukraine association agreement, however, does provide for extensive co-operation between Ukraine and Euratom. For those hon. Members who are wondering, article 342 of the agreement aims to

"ensure a high level of nuclear safety, the clean and peaceful use of nuclear energy, covering all civil nuclear energy activities and stages of the fuel cycle, including production of and trade in nuclear materials, safety and security aspects of nuclear energy, and emergency preparedness, as well as health-related and environmental issues and non-proliferation. In this context, cooperation will also include the further development of policies and legal and regulatory frameworks based on EU legislation and practices, as well as on International Atomic Energy Agency (IAEA) standards. The Parties shall promote civil scientific research in the fields of nuclear safety and security, including joint research and development activities, and training and mobility of scientists."

That clause comes pretty close to the idea of an associated nuclear safeguarding regime, which is what we are discussing today.

Some evidence, therefore, already exists that an associate arrangement with Euratom could cover that particular set of circumstances, and there is a further piece of evidence to bring to the table. Although wording on association with the European Economic Community has changed over the years, wording on association with Euratom has not changed since it was originally written in 1956. Any associate arrangement between the United Kingdom and Euratom would therefore be based on the 1956 wording, not on any subsequent version. Indeed, the drafters of the wording for association with Euratom clearly had in mind an association with the UK, which was a nuclear power at the time but not a member of the EU. Although that was before the non-proliferation treaty, the UK had a clear interest in association with Euratom, and the Spaak report of

1956 declared that Euratom should seek a tailor-made and "particulièrement étroite" association agreement with the UK.

Given that the wording has not changed, and that Euratom at its inception wanted an agreement, it appears substantially possible to resuscitate that approach 60 years later. We therefore believe that the Bill should make it clear that such alternatives are possible. If a Bill is said to be contingent, it is a pretty straightforward logical step to ask what it is contingent on. The Bill should include a purpose clause that states not only that it is contingent, but what it is contingent on and the circumstances under which that contingency should continue.

Our other amendments all follow from that central point. Before I speak to them, I hope the Committee will consider just how central it is. Whether or not the Committee is minded to accept our other amendments, I hope it will agree that a purpose clause at the beginning of the Bill would set things in proper order.

I am aware that we are reaching the magic hour of 1 o'clock, Mr McCabe. I fear I cannot do justice to our other amendments in 90 seconds, so I propose that I should do so after lunch.

The Chair: Actually, you will not be able to carry on after lunch, because you cannot resume your speech after you have taken your seat.

Dr Whitehead: Perhaps someone else will enlighten the Committee about our other amendments after lunch, then. I know hon. Members will be devastated, but I shall take your ruling firmly to heart and sit down.

Ordered, That the debate be now adjourned.—*(Rebecca Harris.)*

12.59 pm

Adjourned till this day at Two o'clock.